

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DAVID GIORDANO,

Plaintiff,

v.

LIEUTENANT VILACOBIA, et al.,

Defendants.

Civil Action No. 22-3294 (MAS)

MEMORANDUM ORDER

This matter comes before the Court on the motion filed by Defendant the United States Attorney's Office for the District of New Jersey ("USAO") seeking the dismissal of Plaintiff's claims against the USAO with prejudice. (ECF No. 22.) Essentially, the USAO argues in its motion that Plaintiff's claims against it must be dismissed with prejudice as the office is entitled to sovereign immunity for Plaintiff's claims which seek only money damages from the USAO. (*Id.*) The USAO also argues that Plaintiff's claims are otherwise deficient as the statutes under which Plaintiff seeks to proceed, 42 U.S.C. § 1983 and the New Jersey Civil Rights Act, require state action as a base element which is lacking for a federal actor such as the USAO. (*Id.*)

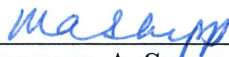
Plaintiff filed correspondence in response to the motion. (ECF No. 23.) In his correspondence, Plaintiff "concurs that the [operative] complaint is defective" and "requests the [C]ourt to dismiss" Plaintiff's claims against the USAO "with prejudice." (*Id.* at 1.) Plaintiff also thereafter filed a proposed fifth amended complaint which omits any claims against the USAO. (*See* ECF No. 29.)

As it is clear that the USAO, as a federal entity, is entitled to sovereign immunity, *see, e.g., F.D.I.C. v. Meyer*, 510 U.S. 471, 476-77, 484-85 (1994), as Plaintiff has consented to the dismissal of his claims against the USAO with prejudice (ECF No. 23 at 1), and as Plaintiff has in any event

freely chosen to omit his claims against the USAO, the motion to dismiss filed by the USAO (ECF No. 22) shall be granted, and Plaintiff's claims against the USAO dismissed with prejudice.

IT IS THEREFORE, on this 23rd day of November, 2022, **ORDERED** that:

1. The USAO's motion to dismiss (ECF No. 22) is **GRANTED**;
2. All of Plaintiff's claims against the USAO are **DISMISSED WITH PREJUDICE**;
and
3. The Clerk of the Court shall serve a copy of this Order upon Defendants electronically
and upon Plaintiff by regular mail.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE